tensive with their respective counties; but does not embrace suits for the recovery of money against residents of other counties, except on written contracts stipulating for payment at a particular place suit may be brought in the township where the payment was agreed to be made. Plaintiff, a resident of Clarke County, gave an order for lightning rods to an agent for a firm doing business in Pottawattamie County. The rods were delivered and erected and plaintiff refused to pay for them. An assignee of the contract, the defendant in this suit, brought an action for the contract price before a justice of the peace in Pottawattamie County, exhibiting an instrument which, on its face, made the contract price payable at Council Bluffs in Pottawattamie County. Notice was served in Clarke County upon plaintiff, who failed to appear and judgment was rendered for the contract price, which was later transcribed to the district court. Thereupon an execution issued which was about to be levied upon plaintiff's property in Clarke County when this action was commenced in equity to enjoin the levy of the execution and to restrain the enforcement of the judgment on the ground that the provision of the contract that the purchase price was payable at Council Bluffs was in fact a forgery, and not in the contract at the time that plaintiff signed it. *Held*, the judgment rendered was not binding on plaintiff, and he could show by parol that the fact which apparently gave jurisdiction was untrue. *Cooley* v. *Barker* (1904), — Iowa —, 98 N. W. 289.

The court concludes that the record in the case before the court shows that plaintiff's contention is true. The substance of the ruling is as follows:— This provision alone gave the justice jurisdiction and without it he had no jurisdiction. A court which in fact has no jurisdiction can not, by deciding that it has, confer upon itself the right to adjudicate a controversy. As to the contention of the defendant, that the justice was required to determine the matter before rendering judgment and his finding is conclusive, as no jurisdiction in fact existed the judgment is subject to attack whenever and wherever the question arises. Plaintiff, ignorant of the forgery and knowing that the court was without jurisdiction, might very well have given no attention to the notice served upon him If the justice had jurisdiction and plaintiff was relying simply on his defense of alteration of the instrument, a different question would be presented. In such a case, on failure to make his defense before the justice, he would be concluded by the judgment,—an illustration between a right decision and the right to decide. As authority for its conclusions the court cites *Gregory* v. *Howell* (Iowa), 91 N. W. 778; *Porter* v. *Welsh* (Iowa), 90 N. W. 582; *Hamilton* v. *Millhouse*, 46 Iowa 74. For cases similar, see *People's Savings Bank* v. *Wilcox*, 15 R. I. 258; *Scott* v. *McNeil*, 154 U. S. 34, *Mechem's Cases on the Law of Succession*, p. 126. This case does not come under the head of collateral actions, for actions in equity for relief from judgments, though indirect in a way, are not collateral. In such cases the question to be determined is whether the adjudication was not procured by fraud, mistake, or accident. See *Eichhoff* v. *Eichhoff*, 107 Cal. 42; *Phillips* v. *Negley*, 117 U. S. 665; BLACK ON JUDGMENTS, sect. 376 et seq; FREEMAN ON JUDGMENTS, sect. 486.

MASTER AND SERVANT—FALSE IMPRISONMENT—DUTY OF MERCHANT TO CUSTOMERS.—S was employed as a floorwalker in the defendant's store, his duties being to prevent wrongful acts by customers, retake stolen goods, and call the police to arrest thieves. The plaintiff, having made some purchases, left the store. While on the sidewalk in front of the store, she was stopped by S, who accused her of stealing goods. She was taken down stairs into a room and searched for stolen goods by S. In an action against the defendant

for false imprisonment, *Held*, that if S honestly believed the plaintiff had stolen some goods, and acted on that belief, defendant would be liable. *Cobb* v. *Simon* (1903), — Wis. —, 97 N. W. Rep. 276.

It was for the jury to determine from the evidence whether the floorwalker was acting for his employer or had stepped aside from his employment to commit a tort for his own purpose. *Bergman* v. *Hendrickson*, 106 Wis. 434. The merchant owes to customers the positive duty of using ordinary care to keep the premises in a reasonably safe condition for the usual use of customers, and this includes the duty of exercising ordinary care in employing capable, law-abiding servants. This rule is within the general principle that the occupant of premises must use reasonable care for the safety of those who, by his express or implied invitation, go upon the premises to transact business with him. *Hupfer* v. *Nat'l. Distil. Co.*, 114 Wis. 279; *Donaldson* v. *Wilson*, 60 Mich 86, 26 N. W. Rep. 842; *Bennett* v. *Railroad Co.*, 102 U. S. 577, 584, 585; *Carleton* v. *Franconia I. & S. Co.*, 99 Mass. 216. In the absence of any express or implied invitation, the foregoing rule does not apply. *Larmore* v. *Iron Co.*, 101 N. Y. 391, 4 N. E. Rep. 752.

MASTER AND SERVANT—FELLOW SERVANTS—ASSUMED RISKS—INJURIES TO SERVANT WHILE OFF DUTY.—Plaintiff's intestate was a section hand employed by the defendant, and, with others, lived in a section house near the track. The train crews usually cut trains standing in front of the section house so that access to and from the house might be more convenient. After working hours the deceased and other employees left the house to go to the defendant's depot to pass away the evening. While passing between two cars the deceased was caught between the cars and killed on account of the alleged negligence of the train operatives in not giving the deceased warning of their intention to move the cars. In an action against the employer, *Held*, the plaintiff could not recover. *Dishon* v. *Cincinnati, N. O. & T. P. Ry. Co.* (1903), —C. C. E. D. Ky. — 126 Fed. Rep. 194.

The court gives as a reason for the holding that the deceased and the train operatives at the time of the injury were fellow servants, although the injury occurred after working hours. By virtue of the contract of employment it was the right if not the duty, of the deceased to board at the section house; and for this reason it was held that he assumed the risk of the negligence of the train operatives who were operating cars in front of the house. For a collection of authorities relating to injuries to servants while off duty see note to *Ellsworth* v. *Metheney*, 44 C. C. A. 484. The case of *Farwell* v. *Boston & Worcester R. Corp.*, 4 Metc. (Mass.) 49, 38 Am. Dec. 339, is the leading authority on the fellow servant test, i.e. the contract of employment, applied in the principal case. The same rule is applied in the English courts. *Tunney* v. *Midland R. Co.* (1866), L. R. 1 C. P. 291; POLLOCK ON TORTS (6th ed.), 95-100. But this contract test has not been uniformly applied in its full scope in this country. *B. & O. Railroad Co.* v. *Baugh*, 149 U. S. 368, 387; 2 MICHIGAN LAW REVIEW 79 and 492. The principal case is hardly in harmony with *Ellsworth* v. *Metheney*, 44 C. C. A. 484, 104 Fed. Rep. 119, 51 L. R. A. 389; and it is contrary to the decision in *Orman* v. *Salvo*, 117 Fed. Rep. 233, 54 C. C. A. 265.

MINOR'S ENLISTMENT IN THE NAVY—VALIDITY—DESERTION—ARREST—HABEAS CORPUS.—A minor 17 years of age disappeared from the home of his parents in Montgomery, Alabama. His parents had no knowledge of his whereabouts, but it was rumored that he had enlisted in the U. S. army and had gone to Porto Rico. He had, however, without the consent of his father,